

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

COLONY INSURANCE COMPANY,

Plaintiff,

v.

**CARLOS A. ORTEGA, JR.; STEPHEN
BROCK; BIG TIME "WINGS" SPORTS
GRILL, INC.; and CHARLES W. GOGGINS,**

Defendants.

Case No.: 2:07cv680-MEF

MOTION TO SUBSTITUTE PLEADINGS

COMES NOW Defendant Big Time "Wings" Sports Grill, Inc. (hereinafter "BTWSG"), by and through the undersigned counsel, and herewith moves this Court for leave to withdraw its Answer and F.R.C.P. 7.1 Corporate Disclosure Statement (Doc. nos. 6 and 7) and substitute the attached Answer and Corporate Disclosure Statement therefor, and as grounds therefore, would show unto this Court as follows:

1. BTWSG filed its Answer and F.R.C.P. 7.1 Corporate Disclosure Statement (Doc. nos. 6 and 7) on August 14, 2007.
2. Both documents contain a typographical error.
3. The attached documents correct the typographic error. No substantive changes are effected by the substitution of pleadings.

WHEREFORE, for the above-stated reasons, Defendant Big Time "Wings" Sports Grill, Inc. prays that this Court will allow it to withdraw Documents nos. 6 and 7, and substitute the attached pleadings therefore.

Respectfully submitted this the 14th day of August, 2007.

/s/ ALGERT S. AGRICOLA
ALGERT S. AGRICOLA (ALA. ID AGR001)
JASON J. BAIRD (ALA. ID BAI035)
ATTORNEYS FOR DEFENDANT
BIG TIME "WINGS" SPORTS GRILL

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on August 14th, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will serve electronic notice upon the following CM-ECF system participants:

Robert A. Huffaker, Esq.
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Counsel for Colony Insurance Company

Respectfully submitted,

/s/ ALBERT S. AGRICOLA

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**SEPARATE DEFENDANT BIG TIME “WINGS” SPORTS GRILL’S
ANSWER TO COLONY INSURANCE COMPANY’S
COMPLAINT FOR DECLARATORY RELIEF**

Comes now separate Defendant Big Time “Wings” Sports Grill (hereinafter “BTWSG”), by and through the undersigned counsel, and in response to Colony Insurance Company’s Complaint for Declaratory Relief, states and answers as follows:

Parties and Venue

1. BTWSG admits the averments of this paragraph.
2. BTWSG admits the averments of this paragraph, and further admits that its corporate organization was dissolved in April 2006.
3. Based on best information and belief, BTWSG admits the averments of this paragraph.
4. BTWSG admits the averments of this paragraph.
5. Based on best information and belief, BTWSG admits the averments of this

paragraph.

6. BTWSG admits the averments of this paragraph.

7. BTWSG denies the averments of this paragraph and demands strict proof thereof.

Jurisdiction

8. BTWSG admits that 28 U.S.C. §1332's diversity requirements are satisfied. BTWSG denies the remaining averments of this paragraph, including the amount-in-controversy averments, and demands strict proof thereof.

The Underlying Lawsuit

9. The underlying lawsuit is a document which speaks for itself. BTWSG admits that Carlos Ortega's June 14, 2007 amended complaint raises claims of (1) excessive force, (2) unreasonable seizure, (3) assault, and (4) battery against the defendants therein, and seeks compensatory and punitive damages. Colony denies the remaining averments of this paragraph and demands strict proof thereof.

The Colony Policy

10. The Colony policy is a document which speaks for itself. BTWSG admits that Colony's complaint for declaratory relief accurately states the text of the relevant portions of the Assault and Battery exclusion of the Colony policy.

11. The Colony policy is a document which speaks for itself. BTWSG admits the Colony policy contains a Liquor Liability Coverage Form.

12. The Colony policy is a document which speaks for itself. BTWSG denies that the passage contained in Colony's complaint for declaratory relief accurately states the text

of the relevant portions of the “expected or intended” exclusion of the Colony policy.

Justiciable Controversy

13. BTWSG denies the averments of this paragraph and demands strict proof thereof.

Prayer for Relief

BTWSG denies that Colony is entitled to the relief sought in its Prayer for Relief and demands strict proof thereof.

AFFIRMATIVE DEFENSES

Alternatively, and without waiving the foregoing, BTWSG states and answers as follows:

1. BTWSG pleads improper venue and lack of jurisdiction.
2. BTWSG pleads that the \$75,000 amount-in-controversy requirement is not met.
3. BTWSG pleads waiver and estoppel.
4. BTWSG pleads ambiguity of the insurance contract.
5. BTWSG pleads that this declaratory action is premature, inasmuch as additional pleadings, discovery, and factual determinations in the underlying lawsuit will materially affect coverage under the Colony policy.

6. BTWSG pleads that this Court should decline to exercise jurisdiction over this case, since permissive intervention in the underlying lawsuit is a more appropriate mechanism for testing coverage in this case.

7. BTWSG pleads that this case is due to be stayed pending resolution of the underlying lawsuit.

8. BTWSG pleads that Colony is guilty of anticipatory repudiation and renunciation.

9. BTWSG reserves the right to interpose additional defenses as factual development occurs in this case.

Respectfully submitted this the 14th day of August, 2007.

/s/ ALBERT S. AGRICOLA
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F.R.C.P. 7.1 CORPORATE DISCLOSURE STATEMENT

PURSUANT TO F.R.C.P. 7.1, Defendant Big Time “Wings” Sports Grill, Inc. (hereinafter “BTWSG”) herewith states that it has no parent corporation.

The following are publicly-held corporations holding 10% or more of Big Time's stock: There are no such corporations.

Respectfully submitted this the 14th day of August, 2007.

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